

State of Missouri

Office of Secretary of State

Case No. AP-08-17

IN THE MATTER OF:

DANIEL SUTTON, CRD No. 2661448

Respondent.

Serve at: 456 Scottsville Drive
St. Charles, MO 63304

CONSENT ORDER

1. The Enforcement Section of the Missouri Securities Division ("Securities Division") alleges that Respondent Sutton committed an unethical business act when he falsified a form used in connection with a client's purchase of a variable annuity in violation of The Missouri Securities Act of 2003 ("The Act").
2. Respondent Sutton and the Securities Division desire to settle the allegations and the matters raised by the Securities Division in relation to Sutton's alleged violations of The Act.

JURISDICTION

3. Section 409.6-601(a), RSMo. (Cum. Supp. 2007), provides that the Securities Act of 2003 shall be administered by the Commissioner of Securities (the "Commissioner").
4. Section 409.6-604(h), RSMo. (Cum. Supp. 2007) provides that the Commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under the Act.
5. Respondent Sutton and the Securities Division stipulate and agree that the Commissioner has jurisdiction over Respondent Sutton and these matters.
6. Respondent Sutton and the Securities Division stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2007), which provides:

" The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act."

WAIVER AND EXCEPTION

7. Respondent Sutton waives his right to a hearing with respect to this matter.
8. Respondent Sutton waives any rights that he may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order.

9. Respondent Sutton specifically forever releases and holds harmless the Missouri office of Secretary of State, Secretary of State, Commissioner of Securities and their respective representatives and agents from any and all liability and claims arising out of, pertaining to or relating to this matter.
10. Respondent Sutton stipulates and agrees with the Securities Division that, should the Division determine that Respondent Sutton misrepresented any of the facts contained herein the Missouri Securities Division reserves the right to pursue any and all legal or administrative remedies at its disposal.

CONSENT TO COMMISSIONER'S ORDER

11. Respondent Sutton and the Securities Division stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
12. Respondent Sutton agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without a factual basis.
13. Respondent Sutton agrees that this settlement between the parties, negotiated and reached in good faith, does not confer upon him the position of "prevailing party" under Missouri law.

STIPULATIONS OF FACT

14. Daniel M. Sutton ("Sutton") is currently pending for securities agent registration with First Brokerage America, L.L.C. ("FBA"). Sutton has a business address of 135 N. Meramec, Clayton, Missouri 63105. Sutton is registered through the Central Registration Depository System ("CRD") with CRD #2661448.
15. FBA is a Missouri registered broker-dealer with a business address of 135 N. Meramec, Clayton, Missouri 63105. FBA is registered through the CRD with CRD #43431.
16. On April 18, 2008, a Uniform Termination Notice for Securities Industry Registration ("Form U5") was submitted by U.S. Bancorp Investments, Inc. ("USB") indicating Sutton was discharged on April 9, 2008, after that firm "developed reasonable facts to determine that a client signature was affixed to a document." USB had located the document during an examination of Sutton's books and records.
17. According to information received by the Division:
 - a. On April 20, 2007, a Missouri resident ("MR") signed paperwork to purchase a variable annuity through Sutton;
 - b. After submitting that paperwork to USB, Sutton received a request from USB to submit an additional form to complete the variable annuity application paperwork;
 - c. Based on time constraints, Sutton made a copy of the client's signature from the previously signed documents, affixed it to the requested form, and dated the form April 30, 2007. Sutton faxed this form to USB.

- d. MR does not remember giving Sutton permission to affix his signature to the document.
18. Section 409.1-102(1), RSMo. (Cum. Supp. 2007), defines an “agent” as “an individual, other than a broker-dealer, who . . . represents an issuer in effecting or attempting to effect purchases or sales of the issuer’s securities.”
19. Section 409.4-412(c), RSMo. (Cum. Supp. 2007), reads in part that, “If the commissioner finds that the order is in the public interest and subsection (d)(1) to (6), (8), (9), (10), or (12) and (13) authorizes the action, an order under this act may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of five thousand dollars for a single violation or fifty thousand dollars for several violations on a registrant”
20. Section 409.4-412(d)(13), RSMo. (Cum. Supp. 2007), reads in part that,
- “A person may be disciplined under subsections (a) to (c) if the person Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten years;
21. The Missouri Code of State Regulations, 15 CSR 30-51.170(1)(T), provides that the grounds for the discipline or disqualification of broker-dealers or agents shall include, in addition to other grounds, “dishonest or unethical practices in the securities business” that include:
- Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance.
22. This order is in the public interest, is consistent with the purposes intended by the Missouri Securities Act of 2003, and is authorized by Section 409.6-604(h) RSMo., (Cum. Supp. 2007).

CONCLUSIONS OF LAW

23. Respondent Sutton committed an unethical business practice when he affixed a client signature to a variable annuity application without authority to do so.
24. Respondent Sutton’s falsification of the form is a dishonest or unethical practice under MO 15 CSR 30-51.170(1)(T).
25. Respondent Sutton’s actions described above are a violation of Section 409.4-412(d)(13), and RSMo. (Cum. Supp. 2007).

ORDER

WHEREAS, the Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent Sutton and the Division, finds the following Order to be in the public interest and necessary for the protection of public investors and consistent with the provisions of Chapter 409, RSMo, *et seq.*

NOW, THEREFORE, it is hereby Ordered that:

1. Respondent Sutton is CENSURED as a broker-dealer agent in the State of Missouri;
2. Respondent Sutton shall deliver a cashier's check to the Securities Division in the amount of one thousand dollars (\$1,000) made payable to the Missouri Secretary of State's Investor Education and Protection Fund. Such amount shall be immediately due and payable.
3. Respondent Sutton shall pay his own costs and attorney fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS 5TH DAY OF AUGUST, 2008.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES

Consented to by:

Nathan Soendker
Chief Registration Counsel
Missouri Securities Division

Daniel Sutton